In the

United States Circuit Court of Appeals

For the Ninth Circuit

No. 4839

CHAN HAI, Appellant

vs.

LUTHER WEEDIN, as Commissioner of Immigration at the Port of Seattle, Washington, Appellee

APPEAL FROM THE UNITED STATES DISTRICT COURT FOR THE WESTERN DISTRICT OF WASHINGTON, NORTHERN DIVISION

Brief of Appellant

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STATEMENT

This is an appeal from an order denying a petition for a writ of habeas corpus. The appellant applied for admission to the United States, basing his application on a Chinese Section 6 merchant's certificate issued pursuant to Section 6 of the Act of 1882

(22 Stat. 60), entitled "An Act to Execute Certain Treaty Stipulations Relating to Chinese," as amended by the Act of July 5, 1884 (23 Stat. 116).

The appellant, Chan Hai, is a merchant engaged in business in Manila. He is a citizen of the Philippine Islands of Chinese descent. In order to be admitted to the United States he is required to present the same certificate as though he were a resident of China. The Act of Congress approved April 29, 1902, (32 Stat. 176) extended the Chinese Exclusion Law to the Philippine Islands, so that citizens of the Philippine Islands of Chinese descent, being merchants and residing in the islands, must present at the port of entry in the mainland a certificate conforming to the regular Section 6 merchant's certificate. The latter act provides: "* * * and said laws shall also apply to the island territory under the jurisdiction of the United States."

Pursuant to said Act, the Department of Labor issued Rule 11 (a), as follows:

"Chinese persons of the exempt classes who are citizens of other insular territory of the United States than the Territory of Hawaii shall, if they desire to go from such insular territory to the mainland or from one insular territory to another, comply with the terms of Section 6 of the Act approved July 5, 1884. The certificate prescribed by said section shall be granted by officers designated for that pur-

pose by the chief executives of such insular territories, and the duties thereby imposed upon the United States diplomatic and consular officers in foreign countries in relation to Chinese persons of said classes shall be discharged by the officers in charge of the enforcement of the Chinese Exclusion Acts at the ports, respectively, from which any members of such excepted classes intend to depart from any insular territory of the United States."

Co-operating with said rule the civil government of the Philippine Islands, on September 23, 1904, in Executive Order No. 38, designated the Collector of Customs for the Philippine Islands as the proper officer to issue such Section 6 certificates to citizens of the Philippine Islands of Chinese descent. Said executive order No. 38 in this respect provides:

"The Collector of Customs for the Philippine Islands is hereby designated to grant such permission in the name of the government of the Philippine Islands to all such Chinese persons as shall have duly established to his satisfaction their eligibility under the law to enter the mainland territory of the United States or any other of its insular possessions.

"This permission, and the prima facie establishment of the facts showing eligibility, shall be evidenced by a certificate signed and approved by him in analogy to the certificate required by section six of the act of Congress of July 5, 1884, and referred to in the rule above cited."

The appellant arrived at the Port of Seattle January 11, 1926, and presented to the proper immigration authorities a certificate mentioned in the acts above, which certificate contained all the information required, and was vised by the Collector of Customs for the Philippine Islands, that officer certifying that he had made a thorough investigation of the statements contained in the certificate and found them to be in all respects true. The statute provides that the certificate when vised as required is prima facie evidence of the facts set forth therein, and shall be produced to the proper immigration officials at the port of entry in the United States, and afterwards produced to the proper authorities of the United States when lawfully demanded and shall be the sole evidence on the part of those producing the same to establish a right of entry into the United States.

ARGUMENT

The only reason for denying the writ of habeas corpus by the District Judge is to be found in his written decision filed March 22, 1926, in which it is stated that as the appellant is nineteen years of age and is an infant in law, he was not entitled to have a Section 6 certificate issued to him by the Collector

of Customs for the Philippine Islands. This point will be discussed later.

The immigration officials at the Port of Seattle, however, urged two other points against appellant's right to be admitted. The first point mentioned is that the Section 6 certificate presented by the appellant was a certified copy, but the Secretary of Labor at Washington, in passing on the appeal, found that the certificate was sufficient under the law, and the Secretary of Labor's certified record will disclose the following decision on that particular point:

"On this point it was found, however, that the Collector of Customs at Manila has certified that the original certificate issued on September 19th last is on file in the Customs House at Manila."

The District Judge also, in his opinion above mentioned, waives this point and states that he "presents a certified copy of Section 6 Chinese Exclusion Act Certificate, *duly issued.*" It is admitted in the record that the original Section 6 certificate is on file with the Collector of Customs in Manila, and that the certificate presented by the appellant is a copy of the same bearing the photograph of the appellant and certified under the seal of the Collector of Customs as having been issued to the appellant, the proper holder thereof. This is a mere technicality, which does not go to the substance of his status as a merchant, and on

this point the District Court, in 100 Fed. 609-11, said: "Nevertheless if he were in fact entitled to come here, the courts might be astute to find some way to avoid merely formal defects in his certificate."

The immigration officials at Seattle have rejected certain brothers of appellant who arrived with certificates showing that they were citizens of the Philippine Islands of Chinese descent, and stated that as his brothers were not entitled to be admitted to the United States, the appellant likewise was not entitled to be admitted. This reasoning is erroneous, for the reason that his brothers who had previously been denied admission did not present Section Six Merchant's Certificates as did the appellant, but presented only certificates showing that they were citizens of the Philippine Islands of Chinese descent, and under the *Palo* decision, 8 F. (2d) 607, this court held that a citizen of the Philippine Islands of Chinese descent was not entitled to be admitted to the United States, simply upon proof of Philippine citizenship. They have since returned to the Philippine Islands and have entered into business, but at the time they applied for admission they were laborers and did not present a Section 6 Merchant's Certificate and were properly denied admission.

THE SOLE QUESTION HERE

The sole question for this court to decide in this case is the point raised by the District Judge in his decision of March 22, 1926. The lower court denied the writ on one ground only. In a few words, the Court there practically stated that as the appellant is nineteen years of age, and not twenty-one, he is an infant in law and is incapable of becoming a merchant if admitted into the United States. The lower court mentions two decisions, but those two decisions are not applicable to the question of the right of appellant to be admitted into the United States. Those decisions simply hold what is recognized to be the law, that an infant may make an agreement which is voidable at his election. The lower court then reasons that the treaty provisions between the United States and China in regard to the admission to this country of merchants of Chinese descent contemplated that only adults were entitled to receive such certificates.

This reasoning goes to a long way around for the purpose of upholding the exclusion decision in this case. In the first place, there is nothing in the treaty between China and the United States or in the law passed to execute the stipulations of said treaty which

states that the applicant for Section Six Certificate shall be twenty-one years of age or over.

The treaty with China and the acts passed to execute the stipulations of that treaty in regard to Chinese merchants show that Chinese merchants are entitled to have Section Six Certificates issued to them, and that such merchants, if they "buy and sell goods at a fixed place of business," are on presentation of such certificates entitled to be admitted to the United States; and said treaty and laws say nothing about whether such merchants shall be minors or adults. The law requiring all Chinese laborers at a certain time to register did not say that if such laborers were minors they need not register, but simply used the word "laborers," which included both minors and adults, if not otherwise exempt.

In *U. S. vs. Joe Dick,* 134 Fed. 988, the court, discussing that point said:

"The Act says nothing about minors or adults. It is 'laborers' that are referred to; and the presumption is I think, that their age is a matter of no importance. Of course, the statute is to receive a reasonable construction."

So then the statute defining a merchant should receive a reasonable construction. If a merchant comes here with a Section Six certificate, and he is nineteen or twenty years of age, there is nothing in the

statute that would cause his rejection on account of his minority. He is a merchant in the country from which he came, and although nineteen years of age can engage in business in the United States without any restriction except the law of the land which protects the merchant himself in his minority.

"All laws should receive a sensible construction. General terms should be so limited in their application as not to lead to injustice or oppression, or an absurd consequence."

U. S. vs. Kirby, 7 Wall 482; 92 L. Ed. 278.

Holy Trinity Church vs. U. S., 143 U. S. 457; 36 L. Ed. 226.

In the case of *U. S. vs. Moy Nom*, 772 Fed. 249, the United States District Court states that there is nothing in the Chinese Exclusion Law to prevent the minor son of a Chinese merchant from acquiring his father's interest, either by gift or purchase, and becoming a merchant himself during his minority, and establishing an exempt status as a merchant, even though an infant. The Court there said:

"* * * that appellant, as son of his father, was entitled to enter and thereafter remain with him as one of the exempted class, during minority at least. * * * and if during that time the son succeeded to an interest of the father in the Hip Lung Company, either by purchase or gift from him, and engaged in the same business the father was engaged

in, no reason is perceived why he does not acquire the status of the father as one of the exempted class. He was lawfully in the United States, and might rightfully acquire property therein, of which he could not be deprived, except by due process of law."

This case, therefore, holds that a Chinese who is a minor may become a merchant and thus set up a separate status of the exempted class, and this in spite of his minority. Of course, the courts will be reasonable in construing this question, and a reasonable construction would not foreclose the appellant, who is nineteen, and will soon be twenty years of age, from being a merchant within the meaning of the Chinese Exclusion Law.

Said law and treaty only inquire whether an applicant for a Section Six Merchant's Certificate is a bona fide merchant in the country where he resided. The fact of the matter is that in China a person is an adult at eighteen years of age. But nevertheless, as stated above, the treaty and law require certain standards as a merchant, and the certificate issued in accordance therewith, in addition to other requirements, shall state the nature, character and estimated value of the business carried on by him prior to and at the time of his application to enter. The term "merchant," mentioned in the treaty, is defined by Section 2 of the Act of

November 3, 1893, (28 Stat. 7), as follows: "A merchant is a person engaged in buying and selling merchandise at a fixed place of business, which business is conducted in his name, and who during the time he claims to be engaged as a merchant does not engage in the performance of any manual labor, except such as is necessary in the conduct of his business as such merchant."

The purpose of this law is to keep out Chinese laborers, and when a Chinese presents a Section Six Merchant's Certificate the law and the rules provide that he shall be admitted so far as the exclusion laws are concerned, simply upon identification as the proper holder of the certfiicate, unless it can be shown that the same was fraudulently issued. No question of fraud can be raised in this case.

The right of such a Chinese merchant to be admitted to the United States when presenting such a certificate rests on his status in the country from which he came and not on what he intends to do or cannot do upon arrival in the United States, except that if he is found to be a laborer after admission he may be arrested and ordered deported. The applicant is not required to immediately engage in business in the United States, and even if it were necessary for him to be twenty-one years of age to engage

in business as a merchant, he will soon be able to meet that requirement. He is entitled to be admitted in any event in the meantime, the only requirement of the law being that he does not become a laborer between the time of his admission and the time of his actually setting up a business in the United States. The law does not even require such a Section Six Merchant to engage in business in the United States, for if he be a merchant in the country from which he came and presents a Section Six Certfiicate he is entitled to be admitted to the United States, and if he does not become a laborer, and if he does not open up a mercantile business he still is entitled to reside in the United States, even if as a retired merchant.

But even aside from that question the appellant, though only nineteen years of age at the present time, is a merchant in the country from which he came, still maintaining an interest in that firm which he organized, which firm exports sugar to China and imports Chinese merchandise to the Philippine Islands; his Section Six Certificate certifies to the truth of these matters and his Section Six Certificate entitles him to be admitted to the United States. What he does when he comes here, in regard to his right to remain here, only interests the immigration officials in the event that he becomes a laborer. There is nothing in the decisions mentioned by the learned

court below to prevent this appellant, when admitted opening up a store of his own, or to prevent him from becoming a member of some already organized Chinese merchantile firm. This court will take judicial knowledge of the fact that the common method of Chinese doing business in this country is for several of them to associate together as partners, putting in from $500.00 to $1,000.00, or more, each, giving the business some Chinese firm name, and opening up a general Chinese mercantile establishment, which status is recognized in law to come within the meaning of a merchant as set forth in Section 2 of the Act of 1893, supra.

Weedin vs. Wong Tat Hing et al., 6 F. (2d) 201.

The fact that a minor engaged in business may repudiate some contract he enters into does not prevent him from engaging in business in this country and becoming a merchant. We all know of many American boys under twenty-one years of age in business for themselves who succeed and prosper, and are merchants. The fact that they may avoid some contract entered into is only a fact for a person who desires to sell his merchandise to the minor to consider, but if the seller desires to sell merchandise to a minor he may do so, and when the goods are purchased by the minor, the latter has an unques-

tioned right to sell them. The appellant will have no trouble securing merchandise from China for his establishment, and will have no trouble finding wholesalers in this country who will sell him their wares irrespective of the fact that he is a minor. There is no law in this country against a minor engaging in business and becoming a merchant, and the law defining a merchant admissible to the United States under the treaty and the laws states that he must be a "person engaged in buying and selling merchandise at a fixed place of business." The decisions mentioned by the learned court below do not hold that the minors therein mentioned are not merchants, but simply hold what is recognized to be the law that agreements made by minors are voidable at their election, and do not mean that an infant nineteen years of age may not engage in busiess for himself or become a merchant by joining some partnership or firm. This rule of law is for the protection of infants in making extravagant and unreasonable agreements and contracts injurious to their own welfare.

That being the only and sole question relied upon by the court below, it should appear to this court that the fact that appellant is a minor is not sufficient to bar him from admission to the United States, when it is shown that he is engaged in business as

a merchant in the country from which he came, that he still maintains his interest in that business which furnishes him an income, and that he is in possession of the sum of one thousand dollars, and that he expects to become a merchant here when admitted to the United States. The Court below fears that he might become a public charge, but this fear is based upon the Court's erroneous conclusion that appellant is incapable of becoming a merchant if admitted to the United States; but the fact that he still maintains his business in the country from which he came and still derives an income therefrom, and that he is equipped with funds with which to enter business in the United States answers that question. The fact that he is at present an infant in law does not prevent him from engaging in business in the United States as a merchant, although during his infancy, which he is about to throw off, being nearly twenty years of age, the law of this country permits him to void certain agreements. This latter state of the law, however, does not destroy his mercantile status in the country from which he came or prevent him from engaging in business in the United States as a merchant.

It is respectfully submitted that as the Collector of Customs of the Philippine Islands investigated the mercantile status of this appellant and satisfied him-

self that the applicant was a merchant and issued to him the certificate required by law, certifying that the appellant was engaged in business in the country from which he came, and as the appellant is the identical person to whom said certificate was duly issued, and as he is equipped to engage in business in the United States and still maintains his interest in his business in the country from which he came, he qualifies as a merchant under the treaty and the law, and is entitled to be admitted to the United States upon his Section Six Merchant's Certificate, which has not been controverted.

Respectfully submitted,

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Attorney for Appellant.